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8 **UNITED STATES BANKRUPTCY COURT**  
9 **NORTHERN DISTRICT OF CALIFORNIA**

10 **SAN JOSE DIVISION**

11 In re:  
12 BURNT RICE KOREAN RESTAURANT,  
13 INC.  
14 Debtor

15 Case No.: 15-53371-MEH

16 **MEMORANDUM OF POINTS AND**  
17 **AUTHORITIES IN SUPPORT OF**  
18 **MOTION TO VALUE COLLATERAL OF**  
19 **AKRIBIS GROUP, LLC.**

20 **CHAPTER 11**

21 Date: None set  
Time: None set  
Court: None set

22  
23 COME NOW Debtor BURNT RICE KOREAN RESTAURANT, INC. ("Debtor"  
hereinafter), by and through The Fuller Law Firm, P.C., its attorney of record, and submits this  
Memorandum of Points and Authorities in Support of its Motion to Value Collateral of Akribis  
Group, LLC ("Lender" hereinafter) and represents as follows:

24 **MEMORANDUM OF POINTS AND AUTHORITIES**

25 **LEGAL ARGUMENT**

26 Rule 3012 of the Federal Rules of Bankruptcy Procedure deals with the procedure in the  
27 valuation of a secured claim. It reads in pertinent part: "The court may determine the value of a

1 claim secured by a lien on property in which the estate has an interest on motion of any party in  
2 interest....” As the debtor in the subject matter, Debtor is the proper party “in interest” within the  
3 meaning of 11 U.S.C. §3012 and may therefore assert its rights to present this motion to the court.  
4

5 Bankruptcy Code Section 506(a)(1) states that an allowed claim secured by a valid lien on  
6 certain property is secured to the extent of “the value of such creditor’s interest in the estate’s  
7 interest in such property.” In interpreting this section, the Supreme Court has equated the quoted  
8 language with “value of the collateral.” See United Savings Ass’n of Texas v. Timbers of Inwood  
9 Forest Assocs., Ltd., 484 U.S. 365 (1988).

10 Bankruptcy Code Section 506(a)(1) further states that an allowed claim secured by a valid  
11 lien on certain property is “an unsecured claim to the extent that the value of such creditor’s  
12 interest ... is less than the amount of such allowed claim.”  
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14 Once an under-secured claim has been bifurcated, the court may confirm a Chapter 11  
15 reorganization plan that pays the secured part of the under-secured claim over time and the under-  
16 secured part of the claim together with other unsecured creditors. 11 U.S.C. §1129(b)(2)(A). *In re*  
17 *Weinstein* 227 BR 284, 292 fn8 (9<sup>th</sup> Cir. BAP 1998).

18 Section 506(a)(1) provides a flexible, case-by-case standard, under which the court should  
19 determine the value of collateral “in light of the purpose of the valuation and of the proposed  
20 disposition or use of such property....” This standard suggests that the court’s determination of  
21 the collateral’s “market value” is a function of both the debtor’s proposed use of the collateral and  
22 the procedural context of the bankruptcy case. Therefore, as is the case herein, if debtors propose  
23 s to retain the collateral under its plan, a court evaluating the debtors’ plan should value the  
24 collateral based on its “replacement value” --- i.e., the price that it would cost the debtor to  
25 purchase similar property in a market transaction. [§506(a)(2)] See Associates Commercial Corp.  
26  
27  
28

*v. Rash*, 520 U.S. 953 (1997) which held the replacement value measure appropriate in context of a debtors' proposal to retain collateral over objection of a secured party.

Here, Debtor, relying on a business appraisal, believes that the current value of the corporate assets is \$60,000.

## CONCLUSION

For the foregoing reasons, and based upon the legal arguments set forth in this Motion and the accompanying declaration, Debtor requests the Court grant the Motion to Value Collateral for the Purpose of Modifying the Lender's lien forthwith.

Dated: Nov. 18, 2015

Respectfully submitted,

## THE FULLER LAW FIRM, P.C.

By: /s/ Lars T. Fuller  
LARS T. FULLER  
Attorney for Debtor